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09/745,386	12/21/2000	Diana Nguyen-Thien-Nhon	ECV-5631	1120

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EXAMINER

STEWART, ALVIN J

ART UNIT	PAPER NUMBER
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3738

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21

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/745,386
Filing Date: December 21, 2000
Appellant(s): NGUYEN-THIEN-NHON ET AL.

Nguyen-thien-Nhon et al
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed October 31, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-4, 24 and 25 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,865,600

Carpentier et al

09-1989

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carpentier et al US Patent 4,865,600.

Carpentier et al discloses a heart valve (13) and a valve holder (11). The heart valve (13) has an inflow end, an outflow end, a flow axis, an annular suture ring (25), a plurality of axially-extending commissure posts (27) and a plurality of commissure (see Figs. 1-3, element 29). The holder (11) has a plurality of flexible materials (e.g. sutures (19)) that have been tensioned across the outflow end of the valve, each length of material has a first segment extending directly between adjacent commissure posts (see col. 5, lines 55-68 and col. 1, lines 1-4; Figs. 2 & 3). However, Carpentier et al does not disclose segments crossing over just radially inward from the commissure post therebetween.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to cross over the sutures just radially inward from the commissure post therebetween because the Applicant has not disclosed that the crossing over of the sutures provides an advantage, is used for a particular purpose, or solves a stated problem not mentioned in the Carpentier et al reference. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the sutures not crossing

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each other in order to facilitated the entrance of the heart valve through the annulus and avoid harmful contact to the heart.

(11) Response to Argument

In addition to the above remarks, on page 2 of the present application, the Applicant described problems of suture looping around one of the cloth-covered commissure posts but the Applicant has failed to show clearly how the Carpentier et al reference unsuccessfully fails to resolve the suture looping around the commissure. Also, the Applicant has failed to show the improvement of the Applicant's invention with respect to the Carpentier et al reference, except by intersecting two sutures together.

On page 2 of the present application, the Applicant describes the problems of suture looping but does not disclose that the Carpentier et al reference had such problems. On the contrary, in col. 1, lines 64-68 of the Carpentier et al reference (US 4,865,600) disclosed is a design capable of reducing the likelihood of suture looping around one or more commissure supports or struts. On page 2, lines 27-29 of the Applicant specification, the Applicant discloses only that slack in the array of sutures (Carpentier et al), for example, may lead to looping of sutures around one of the cloth-covered commissure posts. However, the Applicant does not disclose that the Carpentier et al reference has a flaw in the design. Therefore, if slack in the array of the sutures can lead to suture looping in the Carpentier et al reference, then, slack and/or lack of tension in the Applicant's invention can lead to the same problem as the Carpentier et al reference.

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The declaration under 37 CFR 1.132 filed February 21, 2003 is insufficient to overcome the rejection of claims 1-4, 24 and 25 based upon Carpentier et al as set forth in the last Office action because: the declaration was not timely filed.

Regarding point number three, line 5 of the Applicant's declaration, the Examiner is not clear about the "*points*" and the "profile of the material" that the Applicant is claiming in the declaration. The points and the profile of the material have not been given importance because they were not mentioned during the past two Office actions until now. Additionally, the above two issues are not in the claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



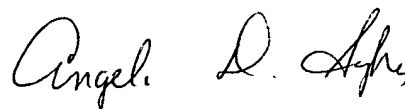
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May 14, 2003

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